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| STATE OF NORTH CAROLINA | IN THE GENERAL COURT OF JUSTICE |
|   | SUPERIOR COURT DIVISION |
| COUNTY OF \_\_\_\_\_\_\_\_\_  | FILE NO. \_\_\_\_\_\_\_\_\_ |
|    |  |
| NORTH CAROLINA  |  |
|    |  |
| v.  |  |
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| **MOTION FOR AN ORDER TO PRECLUDE THE STATE FROM SEEKING THE DEATH PENALTY BECAUSE DEFENDANT WAS XX YEARS OLD****AT THE TIME OF THE ALLEGED CAPITAL CRIME** |

Comes now [CLIENT], by counsel, and moves this Court to enter an order precluding the State from seeking a death sentence and declaring the case non-capital on the ground that the prohibitions against cruel and unusual punishment under the Eighth Amendment to the United States Constitution and Article I, § 27 of the North Carolina Constitution forbid the imposition of the death penalty against individuals who were under 25 years of age at the time the alleged offense(s) was committed. In addition, [CLIENT] respectfully requests a pre-trial hearing on this motion so that he may present evidence relevant to the claims raised herein. As support for this motion, [CLIENT] states the following:

STATEMENT OF THE PERTINENT FACTS

 [CLIENT] is charged with [first degree murder and other charges]. The State is seeking the death penalty as punishment against him upon conviction of eligible offenses. At the time of the alleged homicide on [date], [client] was [xx] years old.

[Additional facts as necessary.]

ARGUMENT

1. This Court should preclude a death sentence for [CLIENT] under the Eighth Amendment because adolescents between ages 18 and 25 have diminished culpability due to underdeveloped brains and resulting deficits.

It is well-established that an adolescent’s brain is fundamentally different from the adult brain it will become. Based on that understanding, in 2005 the Supreme Court concluded that the Eighth Amendment prohibits the execution of individuals who were under 18 at the time of their crimes. *See Roper v. Simmons*, 543 U.S. 551, 575 (2005). Similarly, the Supreme Court has stated that mandatory sentences of life without the possibility of parole are cruel and unusual punishment for individuals who were under 18 at the time of their crimes. *See Miller v. Alabama*, 567 U.S. 460, 470 (2012). Both *Roper* and *Miller* relied on the scientific community’s assessment that the brains of adolescents under 18 are still very much developing, particularly the parts of the brain responsible for, *inter alia*, risk and consequence assessment, impulse control, and susceptibility to peer pressure. As a result of these underdeveloped areas, adolescents suffer deficits in key areas related to the rationales underlying punishment. Namely, given the cognitive deficits adolescents necessarily suffer and the still evolving nature of their brains, adolescents are both less culpable and less susceptible to the deterrent effects of punishment.

What the scientific community has learned more recently, however, is that the concerns the Court had about youth under 18 are equally applicable to individuals through age 25.[[1]](#footnote-1) As late as 2016, brain development research had been focused on adolescents under 18, who were often previously compared to adults as young as 19 or as old as fifty. *See* Elizabeth S. Scott et al., *Young Adulthood as a Transitional Legal Authority: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641, 651 (Nov. 2016).

Recently, however, three major changes have altered the justification for a strict age 18 cutoff: (1) scientific research has developed to explain the effects of brain maturation, or the lack thereof, on the behavioral and decision-making abilities of older adolescents aged 18-25;[[2]](#footnote-2) (2) recent changes in the treatment of older adolescents in the criminal justice system reflect a more informed understanding of late adolescents and the differences between late adolescents and adults with fully-matured brains; and (3) the Supreme Court decided *Hall v. Florida*, 572 U.S. 701 (2014), and *Moore v. Texas*, 137 S. Ct. 1039 (2017), which clarified the interaction between law and science and how to reduce the “unacceptable risk” that death sentences are imposed on those who lack the requisite culpability. *See Hall*, 572 U.S. at 704. Based on these changes, N.C. Gen. Stat. § 14-17(a) – which sets the current cutoff for capitally-tried cases at age 18 – is facially unconstitutional under the Eighth Amendment to the United States Constitution.

1. **Whether a punishment is cruel and unusual necessarily evolves with society’s standards of decency.**

A punishment’s proportionality is determined by the “evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S. 86, 101 (1958); *State v. Green*, 348 N.C. 588, 603 (N.C. 1998) (quoting *Trop*). “[T]he standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.” *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (citing *Furman v. Georgia*, 408 U.S. 238, 382 (1972) (Burger, J., dissenting)). By definition, “evolving standards of decency” must evolve. What may have been acceptable to the courts and society at large in both the distant and recent past may not prove acceptable later. This evolution is clear in the Supreme Court’s Eighth Amendment jurisprudence as it relates to adults charged with non-homicide offenses,[[3]](#footnote-3) defendants with intellectual disabilities charged with capital murder,[[4]](#footnote-4) and juveniles charged with homicide[[5]](#footnote-5) and non-homicide crimes.[[6]](#footnote-6)

A death sentence is impermissibly “excessive when it is grossly out of proportion to the crime or it does not fulfill the two distinct social purposes served by the death penalty: retribution and deterrence of capital crimes.” *Id.* at 183. *See also Kennedy*, 554 U.S. at 441 (citing *Coker v. Georgia*, 433 U.S. 584, 592 (1977)). In assessing the proportionality of a death sentence under the Eighth Amendment, “the Court insists upon confining the instances in which the punishment can be imposed.” *Id.* at 420. The result has been that the death penalty is only proportionate when used for “‘a narrow category of the most serious crimes’ and on those whose extreme culpability makes them ‘the most deserving of execution.’” *Id.* (quoting *Roper*, 543 U.S. at 568). Simply put, the death penalty must be reserved for “the worst of the worst.” *Roper*, 543 U.S. at 568.

The Court’s decisions in *Roper*, *Graham*, *Miller*, and *Montgomery* are grounded in adolescents’ reduced culpability and greater capacity for reform, an understanding gleaned in large part from “developments in psychology and brain science [showing] fundamental differences between juvenile and adult minds.” *Graham*, 560 U.S. at 68; *see also Miller*, 567 U.S. at 471-472, 472 n.5. These concerns are even more significant when a person faces a death sentence. *Gregg v. Georgia*, 428 U.S. 153, 187 (1976)*.* In capital cases, “the Court has been particularly sensitive to ensure that every safeguard is observed,” because “[t]here is no question that death as a punishment is unique in its severity and irrevocability.” *Id.*

1. **Determining whether a punishment is constitutionally infirm requires courts to examine the relevant scientific and professional consensus.**

To determine whether a punishment is constitutionally excessive, courts first must look to “objective indicia of society’s standards.” *Roper*, 543 U.S. at 563. To make this assessment, courts generally consider “the historical development of the punishment at issue, legislative judgments, international opinion, and sentencing decisions juries have made . . . .” *Enmund*, 458 U.S. at 788. After the objective indicia, courts consider proportionality in light of the “standards elaborated by controlling precedents” and an “understanding and interpretation of the Eighth Amendment’s text, meaning, and purpose.” *Kennedy*, 554 U.S. at 421. It is now clear that this calculus must take into account the consensus of the relevant scientific and medical communities.

Before *Roper*, the Supreme Court drew the line for capital punishment at age 16. *Thompson v. Oklahoma*, 487 U.S. 815, 818-38 (1988). After *Roper*, the Supreme Court drew the line at 18. *Roper*, 543 U.S. at 574. *See also State v. Garcell*, 363 N.C. 10 (2009) (“[D]efendant committed a capital crime after he turned eighteen years old, and that simple fact carries defendant’s case over the bright line drawn by *Roper*.”); *State v. Sterling*, 233 N.C. App. 730 (2014) (“Defendant’s age falls past the bright line drawn by *Miller*, which applies only to those who commit crimes prior to the age of 18.”). It is again time to extend the line from 18 to 25.

Supreme Court precedent dictates that in determining the contours of the Eighth Amendment and whether a defendant is ineligible for a death sentence, courts may not ignore the consensus of the scientific community. For example, in *Hall*, the Supreme Court relied heavily on the standards of the scientific community surrounding the issue of intellectual disability. *See* 572 U.S. at 709-10. There, the Court ruled the bright line test then used by Florida, which precluded anyone with an IQ score of over 70 from presenting evidence of intellectual disability, ignored the medical consensus that an IQ score is not dispositive of a person’s intellectual capacity. In *Moore v. Texas*, 137 S. Ct. at 1051-53, the Court concluded that the Texas state court erred when it rejected a finding that the defendant was intellectually disabled under current medical diagnostic standards, and when it applied judicially created non-clinical standards based on lay stereotypes of intellectual disability rather than medical diagnostic standards. Based on *Hall* and *Moore*, it is clear that conformity with the Eighth Amendment requires a court to consider the relevant scientific consensus when determining whether a punishment is excessive. Indeed, two state supreme courts recently did just that.

1. **New evidence demonstrates the Supreme Court’s logic in *Roper* should extend to 18- to 25-year-olds, rendering them ineligible for the death penalty.**

In *Roper,* the United States Supreme Court prohibited death sentences for juveniles under 18 at the time of their crimes. *Roper*, 543 U.S. at 575. The Court stated that “[t]hree general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders”: (1) “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young;” (2) “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;” and (3) “that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.” *Id.* at 569-70.

Today’s scientific consensus teaches that the same three concepts discussed in *Roper* apply to older adolescents aged 18 to 25. At the time *Roper* was decided, science had not yet reached a consensus regarding the brain development of youths in later adolescence. Today it has, and courts must keep up. *See, e.g.*, *O’Dell*, 358 P.3d at 364, 368 (recognizing “fundamental differences between adolescent and mature brains” and requiring court to consider effects of youthfulness as it pertains to culpability of an 18-year-old defendant). As described above, the scientific community has now determined that adolescents in their late teens and early twenties are more comparable to their younger peers than they are to adults in their late-twenties or older. Indeed, recent studies show that certain brain systems and structures, including those involved in self-regulation and higher-order cognition, continue to develop and mature well into the mid-twenties. *See* Terry A. Maroney, *The False Promise of Adolescent Brain Science on Juvenile Justice*, 85 Notre Dame L. Rev. 89, 152 (2009) (“Though estimates vary, many scientists have opined that structural maturation is not complete until the mid-twenties.”).

Based on this scientific consensus, the American Bar Association’s House of Delegates passed a resolution in 2018 calling on American jurisdictions that still have capital punishment to prohibit its imposition against those who were 21 or younger at the time of the offense. *See* Rawles, L., *Ban Death Penalty for Those 21 or Younger, ABA House Says*, ABA Journal (Feb. 5, 2018). Then, in 2022, the American Psychological Association passed its own resolution calling on courts and legislatures to ban capital punishment for individuals under 21.

Although *Roper* draws a bright line of 18 for death eligibility, “[t]he Eighth Amendment ‘is not fastened to the obsolete.’” *Hall*, 572 U.S. at 708 (quoting *Weems v. United States*, 217 U.S. 349 (1910)). It “acquire[s its] meaning as public opinion becomes enlightened by a humane justice.” *Id.* “It is proper to consider the psychiatric and professional studies,” *Hall*, 572 U.S. at 709-10, and those studies now demonstrate that 18- to 25-year-olds are functionally adolescents in terms of brain development and the applicability of punishment rationales. Today we know there is no meaningful difference between [CLIENT] and a defendant under eighteen. Both have brains that have not yet fully developed. Both are prone to immaturity, recklessness, and impulsivity; are still in the neurological development phase; and have transitory personality traits as they search for a stable, authentic identity.

Based on these advances in research, the Supreme Court of Washington held in *In re Pers. Restraint of Monschke*, 482 P.3d 276, 286 (Wash. 2021) that a law imposing mandatory LWOP for first-degree murder was unconstitutional for 18-, 19, or 20-year-olds because it “disregards many scientific indicia of youthfulness in favor of a single, relatively inconsequential number: a defendant’s age.” Similarly, in *People v. Parks*, 510 Mich. 225, 258-59 (Mich. 2022), the Supreme Court of Michigan held that subjecting 18-year-old defendants convicted of first-degree murder to mandatory LWOP sentences violated the Michigan Constitution because “the same features that characterize the late-adolescent brain also diminish the culpability of these youthful offenders . . . .”

1. **An emerging national consensus reflects that individuals aged 18-25 at the time of their crimes should not be executed.**

In addition to the emerging consensus of the medical and scientific community, there is an emerging national legal consensus that older adolescents should be treated more similarly to juveniles under eighteen than to adults. Older adolescents cannot be executed for any offense in twenty-three states, the District of Columbia, and the five United States territories, because the death penalty has been abolished in these jurisdictions. *Facts about the Death Penalty*, Death Penalty Information Center (2018). Seven states that theoretically authorize the death penalty for adolescents 18-25 have not executed older adolescent offenders in the last fifteen years: Kansas, New Hampshire, Montana, Wyoming, Utah, Idaho, and Kentucky.[[7]](#footnote-7) Six of these states have not imposed death sentences in cases of adolescents 18-21 in the last twenty years: New Hampshire, Montana, Wyoming, Utah, Idaho, and Kentucky. Even in the remaining states that authorize the death penalty for offenders aged 18-25, actual executions occur in a minority of the states. Since 2011, that number dropped to nine states.[[8]](#footnote-8)

The Supreme Court of the United States has considered state statutes imposing minimum age requirements to buttress its conclusion that the death penalty was a prohibited punishment for juvenile offenders. *Roper*, 543 U.S. at 569. In the capital sentencing context, youth is a mitigating factor in almost all death penalty states.[[9]](#footnote-9) Since capital punishment is prohibited for those under eighteen, the youth mitigating factor plainly supports a national consensus that considers defendants between 18 and 25 differently than adults.

Three death penalty states have interpreted “onset in the developmental period,” for purposes of an intellectual disability assessment in the capital punishment context, as onset prior to age twenty-two: Indiana, Utah, and Maryland. Ind. Code § 35-36-9-2 (2017); Utah Code § 77-15a-102; Md. Code, Crim. Law § 2-202 (2010). Civil commitment statutes addressing “onset in the developmental period” in four non-death penalty states also use age twenty-two as the developmental age for onset purposes: Minnesota, New Mexico, Rhode Island, and Wisconsin. Minn. Stat. § 253B.02; N.M. Stat § 28-16A-6; N.M. Stat § 43-1-3; R.I. Gen. Laws § 40.1-1-8.1; Wis. Stat. § 51.01(5)(a), § 51.62(1).

There are also many examples of courts and legislatures recognizing that older adolescents are not full-fledged adults. For example, Nebraska, California, Idaho, and New York all offer Young Adult Court for youthful offenders aged 18 to 24 or 25, depending on the state. Many jurisdictions – including North Carolina – also set the age of adulthood above 18 in contexts involving dangerous, risky, and potentially addictive behaviors. Like all other states, individuals under 21 in North Carolina cannot purchase or consume alcohol. N.C. Gen. Stat. §§ 18B-300 through 18B-302. Individuals under 21 also cannot obtain a concealed handgun permit N.C. Gen. Stat. § 14-415.12.

On a national level, society has similarly drawn lines recognizing the immature status of adolescents in their early- to mid-20s. For example, the Gun Control Act of 1968 prohibits individuals under 21 from purchasing handguns from Federal Firearms Licensees. *See generally* Andrew Michaels, A Decent Proposal: Exempting Eighteen- to Twenty-Year-Olds from the Death Penalty, 40 N.Y.U. Rev. L. & Soc. Change 139, 151 (2016). Under federal law, individuals under 21 cannot purchase tobacco. 21 U.S.C. § 387f. Individuals under 21 also cannot open a credit card without a co-signer. 15 USC 1637(c)(8). Additionally, rental car companies either do not rent cars to individuals under 25 or charge a premium. *See Bieszck v. Avis Rent-A-Car Sys.*, 583 N.W.2d 691 (1998) (“Actuarially speaking, the unilateral act of Mr. Davis [who rented the car, and then loaned it to a twenty-year-old] increased the risk of accident”).

Still, recognizing that individuals under age 21 are not fully mature adults but rather are still in need of assistance, supervision, and guidance, jurisdictions like North Carolina offer support. For example, the Foster Care Act of 2008 provides states with financial incentives to extend the age of eligibility for foster care services to 21. *See* Michaels, *supra* at 154. Similarly, the Affordable Care Act requires health insurance plans to cover dependents until they are 26-years-old. 42 U.S.C. § 300gg-14. Similarly, North Carolina guarantees a free high school education to every person under 21. N.C. Gen. Stat. § 115C-1. Children placed into foster care in North Carolina may also continue to receive foster care services until age 21. N.C. Gen. Stat. § 131D-10.2B.

1. The traditional penological purposes for imposing death sentences do not apply to older adolescents.

Death sentences imposed on adolescents between ages 18 and 25 have little to no penological value. Death sentences for older adolescents do not meet any of the three principal rationales of punishment: “rehabilitation, deterrence, and retribution.” *Kennedy*, 554 U.S. at 420. “Rehabilitation, it is evident, is not an applicable rationale for the death penalty.” *Hall*, 572 U.S. at 708-09 (citation omitted). As for the rationale of deterrence, “it is unclear whether the death penalty has a significant or even measurable deterrent effect on juveniles.” *Roper*, 543 U.S. at 571. “The same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence.” *Id.* And “[r]etribution is not proportional if the law’s most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.” *Roper*, 543 U.S. at 571. Today we know that this same understanding about deterrence and retribution must apply to older adolescents between 18 and 25, including [CLIENT].

1. Conclusion.

As a result of all of these concerns, the current language in N.C. Gen. Stat. § 14-17(a) stating that anyone 18-years old or older convicted of first-degree murder is subject to the punishment of “death” violates the Eighth Amendment to the United States Constitution. As explained above, in order to be constitutional, the cutoff under N.C. Gen. Stat. § 14-17(a) should instead be raised to 25 years old.

1. **This Court should preclude a death sentence for [CLIENT] under Article I, § 27 of the North Carolina Constitution because adolescents between ages 18 and 25 have diminished culpability due to underdeveloped brains and resulting deficits.**

In addition to the protection afforded [CLIENT] by the Eighth Amendment to the United States Constitution, which prohibits cruel “and” unusual punishment, [CLIENT] is also protected under Article I, § 27 of the North Carolina Constitution, which prohibits punishments that are cruel “or” unusual.[[10]](#footnote-10) Although the Eighth Amendment to the United States Constitution and Article I, § 27 of the North Carolina Constitution have historically been analyzed under the same standard, *State v. Green*, 348 N.C. 588, 603, 502 S.E.2d 819, 828 (1998), proportionality analysis under the United States and North Carolina Constitutions need not necessarily yield the same result.[[11]](#footnote-11)

Federal case law on federal protections does not control how North Carolina courts should interpret the North Carolina Constitution. *See generally*, *Horton v. Gulledge*, 277 N.C. 353, 359, 177 S.E.2d 885, 889 (1970); *Henry v. Edmisten*, 315 N.C. 474, 480, 340 S.E.2d 720, 725 (1986). North Carolina is free to “develop[] a body of state constitutional law for the benefit of its people that is independent of federal control.” Harry C. Martin, Symposium: *“The Law of the Land”: The North Carolina Constitution and State Constitutional Law: The State as a “Font of Individual Liberties”: North Carolina Accepts the Challenge*, 70 N.C.L. Rev. 1749, 1751, 1757 (1992) (emphasis added). North Carolina has done just that on a number of occasions. *See, e.g.*, *State v. Carter*, 322 N.C. 709, 370 S.E.2d 553 (1988) (rejecting under the North Carolina Constitution the good-faith exception to the exclusionary rule under the Fourth Amendment); *State v. Cofield*, 320 N.C. 297, 357 S.E.2d 622 (1987) (finding the North Carolina Constitutional provisions prohibiting discrimination in jury selection provided a separate basis for relief ).[[12]](#footnote-12)

In the context of punishment, “the disjunctive term ‘or’ in the [cruel or unusual punishment language of the] State Constitution expresses a prohibition on punishments more inclusive than the Eighth Amendment.” Harry C. Martin, *The Law of the Land*, 70 N.C.L. Rev. at 1757. Indeed, in *State v. Conner*, 381 N.C. 643, 668 (2022), our Supreme Court held that Article I, § 27 of the North Carolina Constitution offered “more protection” than the Eighth Amendment “because the Federal Constitution requires two elements of the punishment to be present for the punishment to be declared unconstitutional (‘cruel and unusual’), while the state constitution only requires one of the two elements (‘cruel or unusual’).” Similarly, the Court held in *State v. Kelliher*, 381 N.C. 558, 579 (2022) that Article I, § 27 of the North Carolina Constitution was “textually distinct” from the Eighth Amendment and suggested that “the people of North Carolina intended to provide a distinct set of protections in the North Carolina Constitution than those provided to them by the federal constitution.”

As applied to [CLIENT’S] case, there is particular significance to the word “unusual.” The law surrounding young offenders, including older adolescents, is changing dramatically. What is usual or unusual can be difficult to determine in the quickly evolving adolescent sentencing realm. While this determination often requires courts to discuss prevailing trends and evolving moral standards in making decisions under the Eighth Amendment, North Carolina’s Constitution is more permissive and protective than the federal Constitution. Because of the disjunctive language in our Constitution, this Court is free to determine whether a death sentence would be excessive punishment (*i.e.* cruel) under the specific circumstances of this case – namely, a crime committed by an older adolescent who is likely to be rehabilitated – without considering whether the punishment is unusual.

Undersigned counsel incorporates the arguments and authorities from Issue I above into this argument. If this Court does not preclude the State from seeking a death sentence for [CLIENT] under the Eighth Amendment to the United States Constitution, it should nevertheless do so under the North Carolina Constitution, which provides defendants greater protection. Therefore, the language in N.C. Gen. Stat. § 14-17(a) setting the current cutoff at age 18 is also facially unconstitutional under Article I, § 27 of the North Carolina Constitution.

1. **N.C. Gen. Stat. § 14-17(a) is unconstitutional under the Eighth Amendment to the United States Constitution and Article I, § 27 of the North Carolina Constitution as applied to \_\_\_\_\_\_\_\_\_\_\_\_\_\_.**

In addition to its facial unconstitutionality, N.C. Gen. Stat. § 14-17(a) is also unconstitutional as applied to [CLIENT] under the Eighth and Fourteenth Amendments to the United States Constitution and Article I, § 27 of the North Carolina Constitution. [CLIENT] incorporates the arguments in Issues I and II of this motion and asserts that N.C. Gen. Stat. § 14-17(a) is unconstitutional as applied to him. [CLIENT] is only \_\_\_ years old. In addition, [CLIENT] **[Describe individual factors specific to the client, such as developmental delays, mental illness, or intellectual deficits, that would support extending *Roper* beyond the age of 17]**. Applying N.C. Gen. Stat. § 14-17(a) to [CLIENT] is unconstitutional and the State should therefore be precluded from seeking the death penalty in this case.

**CONCLUSION**

For the foregoing reasons, [CLIENT] respectfully requests this Court enter an order preventing the State from seeking the death penalty against [CLIENT] and declaring the case non-capital. [CLIENT] also requests that this Court hold a pre-trial hearing on the appropriateness of a death sentence based on [CLIENT’s] youth and diminished culpability.

Respectfully submitted this date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Attorney name,

 Address,

 Phone number]

 ATTORNEY FOR DEFENDANT

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that the undersigned attorney served a copy of the foregoing Motion on the State of North Carolina by [hand delivery] to the District Attorney’s Office:

Assistant District Attorney [NAME]

[ADDRESS]

This date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Attorney name,

 Address,

 Phone number]

1. *See, e.g.*, A. Cohen, et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts*, 4 Psychological Science 549-562, 559-560a (2016) (“[T]hese findings suggest that young adulthood is a time when cognitive control is still vulnerable to negative emotional influences, in part as a result of continued development of lateral and medial prefrontal circuitry.”); L. Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, Dev. Rev. Vol. 28(1) 78-106 (Mar. 2008) (noting that “rates of risk-taking are high among 18- to 21-year-olds” and explaining that adolescents and young adults are more likely than adults over 25 to engage in risky behaviors); *Commonwealth v. Bredhold*, No. 14-CR-161, Order Declaring Kentucky’s Death Penalty Statute as Unconstitutional, at \*6-\*10 (Fayette Circuit Court, 7th Div. Aug. 1, 2017) (Scorsone, J.) at \*7-\*9 (and sources cited therein); *State v. O’Dell*, 358 P.3d 359, 364 (Wash. 2015) (“[S]tudies reveal fundamental differences between adolescent and mature brains in the areas of risk and consequence assessment, impulse control, tendency toward antisocial behaviors, and susceptibility to peer pressure.”) (citing sources)). [↑](#footnote-ref-1)
2. *See, e.g., Bredhold* Order (citing, among other sources, B.J. Casey et al., *Imaging the Developing Brain: What Have We Learned About Cognitive Development?*, 9 Trends in Cognitive Sci. 104-110 (2005); N. Dosenbach, et al., *Prediction of Individual Brain Maturity Using fMRI*, 329 Sci. 1358-1361 (2011); A. Hedman, et al., *Human Brain Changes Across the Life Span: A Review of 56 Longitudinal Magnetic Resonance Imaging Studies*, 33 Hum. Brain Mapping 1987-2002 (2012)); *O’Dell*, 358 P.3d at 364, 364 n.5 (Wash. 2015) (citing “psychological and neurological studies showing that the parts of the brain involved in behavior control continue to develop well into a person’s 20s”) (internal quotation marks omitted)). [↑](#footnote-ref-2)
3. *Compare, e.g.*, *Maxwell v. Bishop*, 398 U.S. 262, 263 (1970) (accepting sentence of death for rape without murder before remanding on *Witherspoon* issue), *with Kennedy v. Louisiana*, 554 U.S. 407, 421 (2008) (prohibiting execution of people for non-homicide offenses, including child rape). [↑](#footnote-ref-3)
4. *Compare, e.g.*, *Penry v. Lynaugh*, 492 U.S. 302 (1989) (holding constitutional the execution of intellectually disabled people), *with* *Atkins*, 536 U.S. at 319 (prohibiting the execution of intellectually disabled people). [↑](#footnote-ref-4)
5. *Compare* *Stanford v. Kentucky*, 492 U.S. 361, (1989) (holding constitutional the execution of offenders under eighteen years), *with* *Roper v. Simmons*, 543 U.S. 551, 560 (2005) (prohibiting the execution of offenders under eighteen years). [↑](#footnote-ref-5)
6. *Compare Graham v. Florida*, 560 U.S. 48, 74-75 (2010) (holding that children convicted of nonhomicide offenses cannot be sentenced to life without parole and must have a “realistic” and “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation”) *with* *Miller v. Alabama*,560 U.S. 48, 74-75 (2010), and *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016), (establishing that children must have this meaningful opportunity for release even in homicide cases − except in the rarest of cases where the sentencer determines that the particular child “exhibits such irretrievable depravity that rehabilitation is impossible”). [↑](#footnote-ref-6)
7. The most recent example is Kentucky where, in two recent cases, a Circuit Court ruled the death penalty unconstitutional for those under twenty-one years of age. *See* Vandiver, B., *Trial Delayed, Death Penalty under Review*, University of Kentucky, Kentucky Kernel (Oct. 20, 2017), http://www.kykernel.com/news/trial-delayed-death-penalty-under-review/article; *Kentucky v. Bredhold*, Ky. Fayette Cir. 7th Div. No. 14-CR-161 (Aug. 1, 2017). [↑](#footnote-ref-7)
8. This is true despite the fact that 18- to 25-year-olds – with their still underformed frontal lobes, decreased executive functioning, and “unfortunate yet transient immaturity,” *Miller*, 567 U.S. at 479-80 – are statistically the most violent age group. *A Decent Proposal* at 170-71. [↑](#footnote-ref-8)
9. *See* Alabama, Ala. Code § 13A-5-51(7); Arizona, Ariz. Rev. Stat. § 13-751(g)(5); Arkansas, Ark. Code. Ann. § 5-4-605(4); California, Cal. Penal Code § 190.3(i); Florida, Fla. Stat. Ann. § 921.141(g); Kansas, Kan. Stat. Ann. § 21-6625(a)(7); Kentucky, Ky. Rev. Stat. Ann. § 532.025(1)(b)(8); Louisiana, La. C.Cr. P. art. 905.5(f); Mississippi, Miss. Code Ann. § 99-19-101(6)(g); Missouri, Mo. Ann. Stat. § 565.032(3)(7); Nebraska, Neb. Rev. Stat. Ann. § 29-2523(2)(d); Nevada, Nev. Rev. Stat. Ann. § 200.035(6); New Hampshire, N.H. Rev. Stat. Ann. § 630:5(VI)(d); North Carolina, N.C. Gen. Stat. Ann. § 15A-2000(7); Ohio, Ohio Rev. Code Ann. § 2929.04(B)(4); Pennsylvania, 42 Pa.C.S. § 9711(e)(4); South Carolina, S.C. Code Ann. § 16-3-20(b)(7); Tennessee, Tenn. Code Ann. § 39-13-204(j)(7); Utah, Utah Code Ann. § 76-3-207(4)(e); Wyoming, Wyo. Stat. Ann. § 6-2-102(j)(vii).

Two more states include this factor for defendants who are under the age of eighteen, but as that is now a complete bar to a death sentence, presumably they consider evidence of youth for those over the age of eighteen as well. *See* Indiana, Ind. Code Ann. § 35-50-2-9(6); Montana, Mont. Code Ann. § 46-18-304(g). [↑](#footnote-ref-9)
10. Undersigned counsel hereby also incorporates the arguments from Section I into this argument. [↑](#footnote-ref-10)
11. Notably, the *Green* decision is twenty years old; it drew dissent within the Court; and, most importantly, it predated *Graham*, *Roper* and *Miller* by a decade or more. In considering the evolving standards, *Green* noted the recent lowering of the age of transfer in North Carolina from 14 to 13, and found this evidenced “genuine public concern over the increase in violent juvenile offenders such as defendant.” *Id.* at 605-06, 502 S.E.2d at 829-30. Since then much has changed; today’s standards of decency are different. The prevailing shift today is away from harsh sentences for young offenders. Our legislature recently expanded the jurisdiction of juvenile court to allow many older offenders to stay in the juvenile system rather than transfer to adult court. *See* 2017 N.C. Sess. Laws 57. Today we strive to impose reasonable, compassionate sentences for young offenders, based on an understanding of adolescent development as required by the United States Supreme Court. [↑](#footnote-ref-11)
12. Other states have recognized expanded protections under their states constitutions for adolescent offenders. *See, e.g.*, *State v. Bassett*, 428 P.3d 343, 350 (Wash. 2018) (concluding that the state constitution of Washington “provides greater protection than the Eighth Amendment”); *Diatchenko v. DA*, 1 N.E.3d 270, 283 (Mass. 2013) (finding in its State Constitution “greater protections” of the rights of the accused than under corresponding federal provisions)*; State v. Lyle*, 854 N.W.2d 378, 400 (Iowa Sup. 2014) (concluding that any mandatory minimum sentence for an offender under age 18, for any offense, violated its state constitution). [↑](#footnote-ref-12)